

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 19 September 2006**

Case No.: 2006CER00004

In the Matter of

ED SLAVIN,  
Complainant,

v.

CITY OF ST. AUGUSTINE, FLORIDA/WILLIAM B. HARRISS/  
JAMES PATRICK WILSON/JOSEPH BOOLES/SUSAN BURK/  
DONALD CRICHLOW/ERROL JONES,  
Respondents.

**RECOMMENDED ORDER DISMISSING COMPLAINT**

This matter allegedly arises under the employee protection provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, U.S. Code, Title 42, § 9610 (Act). The current claim was filed on April 20, 2006 alleging that Respondent retaliated against Complainant “as a journalist” for “protected disclosures to federal and state officials on and since February 17, 2006” related to “dumping in the Old City Reservoir.”

Nothing in the Complainant’s sixteen page initial complaint dated April 20, 2006, or in his supplemental letter of August 18, 2006, indicates that the Complainant is an employee of any named Respondent. All indications are that the Complainant file his written complaint based on his position and actions as a non-employee journalist. The Regional Administrator, OSHA Region IV, investigation into the current complaint found that no employer-employee relationship existed and that the Complainant had failed to state a claim upon which relief could be granted.

On August 25, 2006 a prehearing Order to Show Cause was issued to all Parties addressing the question of standing of Complainant to pursue administrative remedies under the Act. In his response the Complainant argues that he was a potential candidate for a paid position as a city councilman and that he is now a declared candidate for such position and thus entitled to standing under the Act. The Complainant argues that being a candidate for an elected position within the city of St. Augustine, Florida makes him an “employee” under the Act and therefore extends administrative coverage to him for the actions involved in this case.

Unlike the Civil Rights Act which was the basis for the cause of action in the U.S. Supreme Court case cited by the Complainant<sup>1</sup> in his response to the Order to Show Cause, the Statute setting forth the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing Regulations are specific as to which individuals are extended administrative protection under the Act.

U.S. Code, Title 42, Section 9610 of the Act provides that:

“(a) Activities of employee subject to protection. No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Administrative grievance procedure in cases of alleged violation. Any employee or representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, apply to the Secretary of Labor for review of such firing or alleged discrimination. ...”

Federal Regulations at 29 CFR § 24.3 provide:

“(a) Who may file. An employee who believes that he or she has been discriminated against by an employer in violation of ... (the Act), may file, or have another file on his or her behalf, a complaint alleging such discrimination.”

Here the Complainant has failed to establish that he has ever been an “employee”, as defined by the Act, of any named respondent related to the alleged protective activity that would fall within the scope of the Act. Accordingly, the Complainant lacks standing to pursue any administrative remedy under the Act, including: remand of the complaint for further investigation, access to the informal settlement judge procedure, a formal hearing before an Administrative Law Judge, and a stay of further judicial actions.

In view of all the foregoing, this Administrative Law Judge finds that the Complainant has failed to establish that he has “employee” status under the Act and that the Complainant lacks standing under his current claim to pursue any administrative remedy under the Act.

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<sup>1</sup> *Robinson v Shell Oil Company*, 117 S.Ct. 843 (1997)

### **RECOMMENDED ORDER**

Based on the foregoing, it is recommended that the current complaint be DISMISSED in accordance with 29 CFR § 24.6(e)(4)(B)(ii).

A handwritten signature in black ink, appearing to read "Alan L. Bergstrom".

Alan L. Bergstrom  
Administrative Law Judge